
No. 15,911.

IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT.

BILL WILLIAM PROHOROFF,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

PETITION FOR REHEARING.

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Comes now the appellant, by his attorney, and files this his Petition for Rehearing of Judgment entered by the Court on October 9, 1958, affirming the judgment of the court below.

Appellant reserves his argued position as to each of the points of appeal, but in this petition addresses himself solely to certain features of the decision wherein he believes the Court may be convinced its opinion is incorrect.

I.

Appellant invites the attention of the Court to the following situation created by the opinion:

- A. The opinion agrees in principle with appellant's position that valid evidence was required to show jurisdiction in the local board and agrees in principle with the query Judge Bowen directed to appellee: On what do you rely for the authentication of the maps? And the opinion obviously disagrees with appellee's answer, namely, We do not believe it was necessary for us to have offered any evidence whatsoever on this subject matter.
- B. Then the opinion goes on to hold that appellant's failure to exhaust his administrative remedies barred him from raising this point.

Appellant respectfully urges that the above are not consistent. If, as he urged in argument, and as the Court impliedly holds, it is essential to a draft prosecution that there be valid proof in the record of the board's jurisdiction over its registrant (concededly it can be either by the presumption of regularity when applicable, or, as determined here, by sufficiently authenticated documents) we have been dealing with the problem of the prosecution's burden; we have not been dealing with the problem of availability of defenses. Appellant believes that he was barred only from "classification processing" defenses. Surely the Court does not intend that a so-situated defendant, one who has not exhausted his administrative remedies, cannot defend at all. Surely such a defendant can rely on the availability of defenses such as failure to show essential elements of the crime charged, including jurisdiction, wilfulness, faulty induction ceremony, etc.

II.

Appellant finally urges that the Court should not have concluded (1) that the documents were "authenticated" just because they were acted upon as genuine, nor (2) should the Court have approved the trial judge's findings that Prohoroff was within the jurisdiction of the local board because the trial judge found "an examination of the documents (so) reveals".

Appellant argues, with respect to (1) that the Court has overlooked *Johnston v. Jones et al.*, 66 U. S. 209, 225: maps are not independent evidence, and should be received only so far as shown to be correct by other testimony in the case; and with respect to (2) that this Court nowhere indicates how it found the "record amply justifies the District Court's findings" on this point. Was it judicial notice? Was it that one of the maps has street addresses printed thereon? As orally argued, neither such basis is a good one.

Wherefore, upon the foregoing grounds, and for other reasons appearing in Appellant's Brief, it is respectfully urged that a rehearing be granted in this matter, and that the mandate of this Court be stayed pending the disposition of this petition.

Counsel further represents and certifies: In counsel's judgment this Petition is well founded and is not interposed for delay.

J. B. TIETZ,
Attorney for Appellant.

